IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.256 OF 2003

The State of Maharashtra ..Appellant

Vs.

Suresh Mangu Madhavi
& Anr. ..Respondents

...

Mr. D.P.Adsule, A.P.P. for Appellant
Mr. A.S.Ramesan for Respondents

...

**CORAM: SMT.V.K.TAHILRAMANI,J.**

**DATE : JULY 18,2005**

**P.C.**

1. Heard the learned A.P.P. for the State of Maharashtra.

2. Being aggrieved by the judgment and order dated 21st June, 2002 passed by the learned J.M.F.C.Bhiwandi in C.C.No. 1893 of 1999, this appeal has been preferred by the State of Maharashtra. By the said judgment and order, the

learned Sessions Judge acquitted the respondent-original accused of the offence under Sections 279, 304A, 337, 338 of IPC and read with Sections 184, 134, 177 of the Motor Vehicles Act.

3. The prosecution case briefly stated is as under:

. That the respondent-accused Suresh Mangu Madhavi was the driver of the bus of Maharashtra State Transport Corporation bearing NO. MH-20/A/4991. On 8.2.1999 at about 7.30 p.m. he was proceeding to Vajreshwari from Ambadi. At that time, P.W.2 J.P.Marol was proceeding in the same direction on his motor bike bearing No.MH-12/HA/6568. His wife Suhasini was sitting on the pillion seat. When the motor bike reached Milestone No.2/500 on Vajreshwari-Ambadi road, the Bus gave a dash to the motor bike driven by P.W.2 J.P.Marol. P.W.2 J.P.Marol and his wife both sustained injuries. At that time, P.W.1 Kamlakar Krishnaji Manje was proceeding with his bullock-cart on the same road. On hearing some noise, he stopped his bullock-cart and he noticed two persons were lying on the road

and one motor-cycle was lying nearby. Injured were brought to Hospital at Bhiwandi. However, Suhasini wife of P.W.2 J.P.Marol died before admission. The F.I.R. came to be lodged by Police Constable Suresh Salunke on 12.2.1999.

4. I have heard the learned A.P.P. for the State and perused the judgment and order passed by the learned J.M.F.C. as well as the evidence in this case which has been produced by the learned A.P.P.

5. Prosecution case is mainly based on the evidence of two witnesses i.e. P.W.1 Kamlakar Manje and P.W.2 J.P.Marol. P.W.1 Kamlakar Manje claims to be an eye witness. He has stated that at the relevant time, he was returning to his house in his bullock-cart. When he came near milestone No.2/500, he heard noise hence, he stopped his bullock-cart and noticed two persons were lying injured on the road and one motorcycle was lying nearby. P.W.1 Kamlakar Manje has further stated that he saw one S.T.bus bearing No.MH-20/A-4999. In his cross-examination, this witness has stated that at the time of incident, he was about 100 feet

away from the spot of incident. He has further stated that incident occurred towards the backside. Further according to P.W.1 Kamlakar Manje the incident had occurred at 7.40 p.m. and there was darkness. This witness has further admitted that due to darkness he could not see the incident. Looking to the entire evidence of P.W.1 Kamlakar Manje it cannot be said that his evidence clearly implicates the appellant. This witness has not stated anywhere that the appellant was driving in a rash and negligent manner.

6. P.W.2 J.P.Marol is the injured witness. He has stated that at about 7.15 p.m. when he was proceeding along with his wife on his motor-cycle near village Savroli, one S.T. bus came in high speed and gave dash to his motor-cycle and due to the said dash, he and his wife fell on the road. Both of them sustained injuries. It is pertinent to note that P.W.2 J.P.Marol in his cross-examination has stated that he did not remember the number of the S.T.Bus.

7. None of the other witnesses have any personal

knowledge about the incident or were actually present at the time of the incident. P.W.10 Patil was the conductor of the Bus. He has stated that at about 7 to 7.30 p.m. the Bus was stopped on the road. He got down to see why the Bus was stopped. He noticed motor-cycle was lying infront of the bullock-cart and one man and woman were lying on the road.

8. In an offence of this nature, rash and negligent driving is an essential ingredient. However, none of the witnesses has stated before the Court that in what manner the accused was driving the S.T.Bus nor have they deposed that the Bus was being driven in a rash and negligent manner so as to endanger human life. The complaint also does not disclose any rashness or negligence on the part of the accused while driving the Bus nor does the panchanma drawn on the spot of incident throw any light on the basic fact as to whether the Bus was driven in rash and negligent manner. Looking to this evidence, the learned Magistrate was of the opinion that the evidence fell short to prove the rashness and negligence on the part of the accused.

Looking to the evidence on record, in my opinion, the view taken by the learned Magistrate is reasonable and possible view.

9. It is well settled that if the view of acquittal could have been reasonably arrived at then the mere circumstance that the appellate Court would have taken a different view, would be no ground to interfere. In this connection, there is no dearth of authorities but to eschew prolixity, I am referring to only two of them i.e. **AIR 1971 S.C. 66 Khedu Mohton and Ors. Vs. State of Bihar and C.Anthony Vs. K.G.Raghavan Nair (2003) 1 SCC 1.** In the case of **C. Anthony,** the Supreme Court has observed that unless the findings of the trial Court are perverse or contrary to the material on record, the High Court cannot in appeal substitute its findings, merely because another contrary opinion was possible on the basis of material on record. As stated earlier, the view taken by the learned Magistrate is a reasonable and possible view hence, no interference is called for. Hence, appeal is dismissed.

[V.K.TAHILRAMANI,J.]